

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Charleston Division**

DEREK CLEMENTS, <i>et al.</i> ,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No. 2:22-cv-02069-RMG
)	
LLOYD J. AUSTIN, III,)	
)	
Defendant.)	
)	

**SUPPLEMENTAL EXHIBITS FOR REPLY IN SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

Plaintiffs, by and through counsel, respectfully submit these Supplemental Exhibits to their Reply in Support of Plaintiffs' Motion for a Preliminary Injunction.

Plaintiffs filed their Reply in Support of Plaintiffs' Motion for a Preliminary Injunction on August 31, 2022. Plaintiffs' Counsel were subsequently made aware of additional documentation that Plaintiffs believe will be of critical importance to the Court on the issue of their Motion for Preliminary Injunction.

Specifically, Plaintiffs provide three documents that have come to Plaintiffs' attention since filing their August 31 Reply:

- (1) Internal Department of Defense email from September 1, 2021, which identifies the distinction between EUA and licensed vaccine products and the inherent legal risks in forcing EUA vaccines on servicemembers. Indeed, despite acknowledging the legal risks, DoD chose to proceed with disseminating its guidance to perform Defendant's mandate with EUA, unlicensed vaccines.

- (2) A memorandum from Acting Assistant Secretary of Defense Terry Adirim, showcasing DoD's attempts to reconcile the EUA status of the vaccines with the August 24 memorandum from Defendant Secretary Austin.
- (3) An affidavit from U.S. Coast Guard Lieutenant Chad Coppin testifying to the fact that certain EUA-labeled vaccine lots do not meet licensed vaccine requirements.

These documents demonstrate that DoD was aware that it was requiring service members to submit to EUA vaccination. Moreover, service members' vaccination with EUA products was intended from the DoD vaccine mandate's inception. In other words, DoD knowingly circumvented its own requirement that the mandate would only apply to fully licensed vaccines. Third, these documents rebut any assertion that EUA and licensed vaccines are interchangeable, whether from a legal or from a compositional standpoint. Moreover, these documents reinforce that FDA is violating its vaccine labeling requirements.

In addition, Plaintiffs call attention to President Biden's statement from a *60 Minutes* interview aired on Sunday, September 18, 2022, in which the President states that "the pandemic is over."¹ While the President's comments do not impact Plaintiffs' argument on the merits that the August 2021 order was arbitrary and capricious as of its issuance, this statement does refute any argument currently advanced by Defendant concerning the dire severity of the illness and the consequential need of the mandate to combat it.²

¹ See David Cohen & Adam Cancryn, *Biden on '60 Minutes': 'The pandemic is over*, Politico (Sept. 18, 2022, at 8:07 PM, updated on Sept. 18, 2022, at 8:47 PM), <https://www.politico.com/news/2022/09/18/joe-biden-pandemic-60-minutes-00057423> ("The pandemic is over [...] if you notice, no one's wearing masks. Everybody seems to be in pretty good shape.").

² For example, Defendant's notation that more service members have died from illness in previous wars than from combat related injuries is all the more irrelevant in light of the

Accordingly, Plaintiffs believe these documents provide critical context, and submit the following attached documents for the Court to consider.

Respectfully submitted,

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President's statement. This statistic touted by Defendant is no more relevant in the context of COVID-19 than it is with smallpox. Both diseases have simply ceased to have any widespread deadly effects on our service members. They are, as characterized by President Biden, "over."